TNFORWARD

TOP TO BOTTOM
REVIEW

Tennessee Regulatory Authority

TRA

HIGHLIGHTS

- Review inspection fee structure for the rate regulated utilities to make sure it is equitable, fair, and reasonable based on the workload generated by the rate regulated utilities.

- Work with the Comptroller's Office to reevaluate the funding of the Office of State Assessed Properties within the Comptroller's Office.

- Coordinate with the State Comptroller and stakeholders to develop legislation directed towards compliance with the proposed federal rules and regulations relative to the underground utility damage prevention program.

- Develop web-based interfaces to lower compliance costs of businesses offering Lifeline telephone service with new federal regulations in order to enhance and expand Tennessee consumers' access to the Lifeline program.

- Employ "Lean Government" principles by reorganizing the support staff for the five part-time directors in order to reduce costs and improve efficiency.

INTRODUCTION

The Tennessee Regulatory Authority (TRA), the governing body to regulate investor-owned utilities and gas pipeline companies in Tennessee, was created in 1996. The TRA's mission is to promote the public interest by balancing the interests of utility consumers and providers while facilitating the transition to a more competitive environment. Prior to July 1, 2012, the TRA's leadership consisted of four full time Directors (commissioners) appointed by the Governor, Lieutenant Governor, Speaker of the House, and a joint appointee by consensus of all three state officials. The terms for each appointment were staggered to provide continuity.

As a prelude to the Governor's Top to Bottom Review, legislation was enacted, effective July 1, 2012, to replace the four full-time Directors with five part-time Directors and appoint a full-time Executive Director. The five part-time Directors are appointed by the Governor, Lieutenant Governor, Speaker of the House, and two joint appointees by consensus of all three state officials. The terms for each appointment continue to be staggered to provide continuity. In addition, the Directors elect a Chair and Vice Chair to serve two-year terms with the Vice Chair succeeding the Chair at the end of the Chair's two-year term. The Chair has the primary responsibility of formulating the broad strategies, goals, objectives, long-range plans and policies of the TRA. The Executive Director is initially appointed by consensus of all three state officials and serves as the agency's chief operating officer and appointing authority.

All fifty states have an agency similar to the TRA, the majority of which are called either Public Service Commissions or Public Utility Commissions. While the statutory mandates vary state to state, the common focus of all fifty agencies is regulatory oversight of privately-owned utilities. To that end, the agency provides an accessible and efficient process that is fair and unbiased to the regulated utilities while protecting the consumers of Tennessee. In addition to this oversight, the TRA manages consumer-friendly programs developed by the General Assembly, such as the Do Not Call Program, the Do Not Fax Program, and the Telecommunications Device Access Program. In addition, the TRA administers the Lifeline telephone assistance program that assists qualifying low-income consumers in obtaining telephone service at a discounted rate. Further, the TRA oversees the streamlined entry process into the video services market as set forth in the Competitive Cable and Video Services Act enacted in 2008 which provides consumers more choices for video services. In addition, on July 2, 2012, the Federal Communications Commission elected the TRA to be the sole authorized entity certified to administer the National Deaf Blind Equipment Distribution Program Pilot for Tennessee.

APPROACH/METHODOLOGY

The Tennessee Regulatory Authority's Top to Bottom Review examined the TRA's mission, functions, structure, and focus. The main questions to be answered were, first, should state government actually be doing this and, second, is this the most efficient and effective way to accomplish its goals?

The Executive Director met with each division head separately and as a group to determine areas where efficiencies could be implemented and cost reductions realized. In addition, as an agency that is financially independent of Tennessee's General Fund, discussions were held regarding the fee structure of the TRA.

RECOMMENDATIONS

Recommendation 1: : Review inspection fee structure for the rate regulated utilities to ascertain that it is equitable, fair, and reasonable based on the workload generated by the rate regulated utilities.

> ***Discussion*:** : Beginning in 1995, the State of Tennessee and the U.S. Congress implemented legislation to promote competition in the telecommunications market. In addition to creating a competitive marketplace, this legislation required the TRA to implement regulatory changes to allow traditional telephone companies to price their services in response to competition and other market forces. Further, after 2004, as competition in the telecommunication industry continued to develop and evolve, new federal regulations diminished the role of the TRA in managing the development of competition. At the state level, the TRA's regulatory role with respect to telecommunications was limited legislatively until ultimately a deregulatory policy, known as Market Regulation, was adopted by the legislature in 2009. Market Regulation permits any incumbent provider of telecommunications service that has elected price regulation or competitive provider, at its option, to choose to operate under an increasingly reduced set of regulatory obligations. While price cap regulation was less restrictive than traditional rate of return regulation, Market Regulation further relaxed regulatory requirements

allowing for businesses to be more responsive to customer demands and the prevailing business climate. For traditional telephone companies that have not chosen to elect price cap regulation, a streamlined procedure to enter into price cap regulation and ultimately the deregulatory Market Regulation was also created. The TRA continues to monitor and resolve disputes with respect to wholesale market transactions between telecommunications providers as required by the 1996 federal legislation. Overall, as competition developed, the scope of telecommunications regulatory activity has diminished due to subsequent legislative changes, development and adoption of new technologies and the choices made by consumers given the competitive telecommunications market.

Pursuant to the price regulation and market regulation legislation, the agency's responsibility regarding the regulation of the majority of the investor owned telecommunication companies has decreased. However, while the regulation of telecommunication companies has decreased, the regulation of rate regulated privately owned gas, electric, water, and wastewater companies has increased. For example, the largest regulated water company in Tennessee has filed six petitions with the agency since 2003 to increase its rates with each rate case taking a minimum of six months to analyze and adjudicate. The investor-owned rate regulated gas companies have filed nine similar petitions during the same period. These rate cases are in addition to the annual audits of the energy companies performed by the TRA including, but not limited to, Actual Cost Adjustments, Purchased Gas Adjustments, Weather Normalization, and Performance Based Incentive Programs.

To align the TRA's operating costs with the decrease in telecommunication regulation, since 2004, the TRA has reduced its staff by 30%. However, in addition to right sizing the TRA workforce, the inspection fee revenue needs to be realigned to mirror the shift in the workload now required to regulate the different types of utilities. Legislation is needed to address this issue.

Recommendation 2: Work with the Comptroller's Office to reevaluate the funding of the Office of State Assessed Properties within the Comptroller's Office.

Discussion**:** : Prior to June 30, 1996, the Office of State Assessed Properties was part of the Tennessee Public Service Commission, the predecessor to the Tennessee Regulatory Authority. Upon the sunset of the Tennessee Public Service Commission and the formation of the Tennessee Regulatory Authority, the Office of State Assessed Properties (SAP) was moved to the Comptroller's Office effective July 1, 1997, and the funding of SAP was split between the TRA, the Department of Transportation, and Department of Safety. The Department of Transportation's percentage was determined by the number of air freight, airline, barge line, private car, and railroad companies that SAP assesses, the Department of Safety's percentage was determined by the number of motor bus and motor carrier companies SAP assesses, with the TRA being charged for all remaining types of companies that SAP assesses even though this included companies outside the jurisdiction of the TRA (i.e. electric cooperatives, power transmission lines, wireless companies, and telephone cooperatives). For the first eleven years of the arrangement, the TRA's share of the funding was 52.5% which totaled $4,098,100. Beginning July 1, 2008, this percentage decreased to 44%. In total, since July 1, 1997, the TRA has funded $5,902,500 of the cost of a division outside of the TRA over which the TRA has no budget oversight or control.
Should the formula be reevaluated and the TRA's percentage be reduced to reflect only those companies regulated by the TRA, the TRA's percentage would be 25%. This reduction would result in an estimated annual savings, based on the FY11-12 cost of SAP, of $122,100 to the TRA.

Recommendation 3: Coordinate with the State Comptroller and stakeholders to develop legislation directed towards compliance with the proposed federal rules and regulations relative to the underground utility damage prevention program.

Discussion: The 2012 Performance Audit of the TRA issued by the Comptroller's Office contained a finding that recommended "the General Assembly may want to consider taking steps to strengthen Tennessee's program to achieve greater federal compliance and to avoid future decreases in funding to the program. This may include explicitly authorizing damage prevention enforcement authority within the division and increasing civil penalties for pipeline safety violations to levels that are substantially the same as federal levels." Meanwhile, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has prepared draft rules as guidance for states' management of utility underground damage prevention programs. The rules are not finalized as of this date, but according to PHMSA officials, it is anticipated that they will be completed by February 2014. Contained within the draft are seven criteria that PHMSA will use in evaluating the effectiveness of Tennessee's damage prevention program and nine elements of a comprehensive program. Of the seven criteria, the Comptroller has identified four deficiencies as follows: 1) No central, state-level enforcement authority, 2) Need for civil penalty enforcement authority at a level sufficient to ensure compliance, 3) A reliable mechanism for learning about excavation damage, and 4) State investigative authority to determine fault and/or damage.

Recommendation 4: Develop web-based interfaces to lower compliance costs of businesses offering Lifeline telephone service with new federal regulations. Development of such interfaces will enhance and expand Tennessee consumers' access to the Lifeline program.

Discussion**:** : In Tennessee the TRA administers the Lifeline program. Lifeline is a government benefit program that provides discounts on telephone service for low-income consumers that meet certain eligibility requirements. Telephone service subsidized by the Lifeline program enables recipients to have the opportunities and benefits of phone service like the ability to connect to jobs, family and emergency services like 911. Lifeline is supported by the federal Universal Service Fund.

The Federal Communications Commission released an order on February 6, 2012 to comprehensively reform the Lifeline program. The comprehensive reform imposed uniform requirements on telephone companies providing Lifeline service to determine if a consumer meets the eligibility requirements to receive the Lifeline discount. In part, the establishment of uniform eligibility determination requirements was to address the concern that the previous eligibility determination standards potentially allowed for waste, fraud and abuse of Lifeline program funds. One of the new federal requirements was that Lifeline providers must determine eligibility of its consumers, when available, by querying a state or federal social service electronic database. The FCC concluded that mandating the use of electronic databases, where available, will reduce regulatory burdens on companies that provide Lifeline service.

As a result of the FCC's ruling, the TRA conducted a workshop to help Lifeline telephone providers comply with the new federal requirements. The TRA has also been approached by several providers requesting the development of software and procedures to access electronic databases to verify customer Lifeline eligibility as required by the FCC.

There are approximately 1,342,370 low-income Tennesseans eligible to receive these discounted telecommunication services. Currently, however, there are only 427,936 Tennesseans receiving federally funded discounts. The TRA believes that the development of electronic interfaces will allow more Tennesseans to access the Lifeline benefits as the interfaces will enable private telephone companies providing Lifeline service to compete for and/or service eligible customers at a lower cost.

Recommendation 5: Reorganize the support staff for the five part-time directors with the goal of increasing efficiency while implementing personnel cost reductions.

Discussion**:** : Due to the restructuring of the TRA leadership which was effective July 1, 2012, an analysis was completed regarding the support staff required in each of the part-time directors' offices. At June 30, 2012, each of the four full-time directors had a senior policy advisor and an administrative assistant. In lieu of the senior policy advisors, the part-time directors can consult with the industry-specific professional staff within each division of the TRA on an as needed basis. The elimination of

these positions would reduce the annual personnel cost by an estimated $473,000 without affecting the efficiency of the part-time directors' offices. Therefore, it has been determined that the existing senior policy advisor positions should be eliminated.

In addition, rather than each director having an administrative assistant assigned specifically to his or her office, two administrative assistants will support all five part-time directors. One of the other two administrative assistants will be assigned to the executive director and one will be transferred to another division within the TRA. Without increasing expenditures, this reassignment of personnel will optimize the utilization of existing personnel.

This recommendation has been completed.

Recommendation 6: Consider not assigning state-issued vehicles to each part-time director of the TRA, but rather paying mileage for the use of personal vehicles.

***Discussion*:** As discussed in the Introduction of this report, effective July 1, 2012, five part-time director positions replaced four full-time director positions. Since 1996, the four full-time directors have been issued state vehicles upon their appointments. Given that the 2012 legislation requires only one directors' conference per month, it would be more efficient not to issue state vehicles to the five part-time directors. In fact, an analysis of the savings realized from not issuing state vehicles versus paying mileage for the use of their personal vehicles revealed an estimated cost reduction of $36,400 annually. Therefore, it has been determined that the five part-time directors will be reimbursed mileage instead of being provided state-issued vehicles.

This recommendation has been completed.

Recommendation 7: Review the number of telecommunication lines utilized by the agency due to reduction in staff in order to be more efficient.

***Discussion*:** : Due to the 30% decrease in the number of personnel employed by the TRA since 2004, the agency consulted with the heads of each division and the state Office of Information Resources to determine the telecommunications needs of the agency at its present level of staffing. This study concluded that the TRA has an excessive amount of telecommunication lines. Rather than continue to have incoming specific and outgoing specific lines, all incoming and five outgoing lines should be converted to two-way lines and twenty-nine other telecommunication lines should be deleted. The conversion to two-way lines and the deletion of the twenty-nine other lines will result in an estimated annual savings in telecommunication costs of $8,500.

This recommendation has been completed.